

ORIGINAL

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

05-262

United States District Court		District	DELAWARE
Name	KENNETH M. SMITH	Prisoner No.	00193906
Place of Confinement		Case No.	
DELAWARE CORRECTIONAL CENTER, SMYRNA DELAWARE 19977			
Name of Petitioner (include name under which convicted)		Name of Respondent (authorized person having custody of petitioner)	
KENNETH M. SMITH		v. THOMAS L. CARROLL, WARDEN	
The Attorney General of the State of:			
M. ANNE BRADY			

PETITION

- Name and location of court which entered the judgment of conviction under attack SUPERIOR COURT
OF DELAWARE IN AND FOR NEW CASTLE COUNTY, WILMINGTON DELAWARE 19801
- Date of judgment of conviction JUNE 3, 1998
- Length of sentence LIFE WITHOUT PAROLE, PURSUANT TO 11 DEL.C. § 4214(b)
- Nature of offense involved (all counts) ROBBERY IN THE FIRST DEGREE,
PURSUANT TO 11 DEL.C. § 832(a)(2)
- What was your plea? (Check one)
 - (a) Not guilty ☒
 - (b) Guilty ☐
 - (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - (a) Jury ☒
 - (b) Judge only ☐
- Did you testify at the trial?
Yes ☐ No ☐
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

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9. If you did appeal, answer the following:

(a) Name of court SUPREME COURT OF DELAWARE(b) Result AFFIRMED(c) Date of result and citation, if known SMITH V. STATE, 738 A.2D 239 (1999)(d) Grounds raised FAILURE TO HOLD FORMAL PRAYER CONFERENCE VIOLATING DUE PROCESS, AND, IMPROPER JURY INSTRUCTION OF THE OFFENSE CHARGED.

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court SUPERIOR COURT OF DELAWARE / NEW CASTLE COUNTY(2) Result AFFIRMED(3) Date of result and citation, if known SMITH V. STATE, 2000 WL 1887933 (DE1)(4) Grounds raised SEE MEMORANDUM ACCOMPANYING

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court NONE(2) Result NONE(3) Date of result and citation, if known NONE(4) Grounds raised NONE

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court SUPERIOR COURT OF DELAWARE / NEW CASTLE COUNTY(2) Nature of proceeding POST CONVICTION(3) Grounds raised SEE MEMORANDUM ACCOMPANYING

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- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result NONE

(6) Date of result NONE

- (b) As to any second petition, application or motion give the same information:

(1) Name of court SUPREME COURT OF DELAWARE

(2) Nature of proceeding APPEAL

(3) Grounds raised N/A

- (4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☒

(5) Result AFFIRMED

(6) Date of result JUNE 20, 2004

- (c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☒ No ☐

- (d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- ☒ (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- ☒ (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: _____

SEE MEMORANDUM ACCOMPANYING

Supporting FACTS (state *briefly* without citing cases or law) _____

B. Ground two: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

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C. Ground three: _____

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Supporting FACTS (state *briefly* without citing cases or law): _____

D. Ground four _____

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Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: _____

NONE

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____

David A. A. Facciolo

(b) At arraignment and plea _____

N/A

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(c) At trial David A. Facciolo

"

"

(d) At sentencing

"

"

(e) On appeal

(f) In any post-conviction proceeding NONE(g) On appeal from any adverse ruling in a post-conviction proceeding NONE

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

NONE(b) Give date and length of the above sentence: LIFE

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Kenneth Smith M

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

4-30-05

(date)

Kenneth Smith M

Signature of Petitioner

Kenneth M. Smith #B193916
Delaware Correctional Center
Smyma, DE 19977

10-Clerk of the Court
United States District Court
844 N. King Street
Lockerbox 19
Wilmington, DE 19801
U.S.M.S.
X-RAY

